

THE ROLE OF CONSULTATION IN THE REFORM OF ROMANIAN PENITENTIARY SYSTEM

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Rezumat:

Acest articol analizează procesul de consultare și rolul acestuia în reformarea sistemului penitenciar românesc. La ora actuală, procesul de consultare este considerat o zonă în care inovarea și noile abordări sunt destul de evidente, deoarece implică grupuri noi, adesea ignorate. Beneficiile consultării sunt din ce în ce mai cunoscute, deoarece aceasta permite implicarea unui număr mare de părți interesate. În partea a doua a lucrării am analizat practica consultării publice în România, reliefând necesitatea îmbunătățirii procesului de consultare și dialog social prin crearea unui mecanism și dezvoltarea unor practici de implicare a persoanelor interesate în procesul de consultare.

În finalul acestui articol am evidențiat rolul cheie al consultării în identificarea problemelor din sistemul penitenciar prin intermediul unui chestionar distribuit angajaților și persoanelor private de libertate din cadrul Administrației Naționale a Penitenciarelor. Pe baza problemelor identificate, am evidențiat în final principalele direcții de reformă a sistemului penitenciar românesc.

Cuvinte cheie: procesul de consultare, transparență decizională, drepturile fundamentale ale individului

Abstract:

This article analyses the consultation process and its role in reforming the Romanian penitentiary system. Nowadays, the consultation process is considered an area where innovation and new approaches are most in evidence, involving new groups often ignored. The benefits of consultation are increasingly acknowledged, because it allows the involvement of many stakeholders. In the second part of the paper we analyzed the public consultation practice in Romania, emphasising the necessity of improving the consultation process and the social dialogue by creating a mechanism and developing practices that involve people interested in the consultation process. At the end of the article we have shown the key role of consultation in identifying the penitentiary system issues by means of a questionnaire distributed to the employees and prisoners of the National Penitentiary Agency. At the end, the issues identified allowed us to show the main reform directions in the Romanian penitentiary system.

Keywords: consultation process, decisional transparency, respect for fundamental rights of the individual

JEL Classification: H41, K4, K14, D83.

The research methodology used is the analysis. In order to carry out this analysis, we used the reports and strategies developed by the Romanian Government, and other documents of national and foreign organizations specialized in this field.

Article contributions. In this paper we carried out a study using a questionnaire distributed to the employees and prisoners of the National Penitentiary Agency. In this study we have shown, in terms of perceptions rather negative in society, the key role of consultation in identifying the penitentiary system issues.

1. THE CONSULTATION - THE MAIN WAY OF INVOLVING THE AFFECTED PARTIES

The consultation process is "one area/.../where innovation and new approaches are most in evidence, involving new and previously ignored/.../. While the benefits of effective consultation are increasingly acknowledged, it is not without risks and pitfalls". (Report United Kingdom of Great Britain and Northern Ireland, 1999).

Public consultation implies the interaction between the decision makers and the interests groups (the stakeholders) in a legal and institutional framework in order to adopt the public decision regarding a specific issue. All those involved in public consultation have expectations about this process, they have a stake in the decision to be taken and where the consultation process is organized. Therefore the representativeness of those who participate in the process represents an important issue.

The consultation should be seen as part of collecting evidence in order to support assistance for the public policy and not as a substitute for analysis, and final decisions must be taken by the specialists from the public authority responsible in this area.

"Building effective consultation practices means dealing with the time and cost requirement and developing the relevant skills". (Report United Kingdom of Great Britain and Northern Ireland, 1999). The efficiency of the consultation is determined by human and material resources involved, but especially by the allocation of an adequate period of time for a more extensive consultation. In this way, we consider that it is necessary to involve people outside government, possibly even outsourcing this process and increasing the involvement of civil society in order to give "inclusiveness" to the public

consultation. "Public consultation demands some particular skills and competencies, such as presentation and communication skills; dealing with minority groups, survey techniques and data interpretation". (Report United Kingdom of Great Britain and Northern Ireland, 1999).

TABLE NO 1. BENEFITS AND PITFALLS OF CONSULTATION

Benefits – consultation can:	Pitfalls – consultation can:
Enhance the quality and effectiveness /.../by providing insights that are otherwise difficult to obtain – such as differing cultural perspectives, hidden costs and risks, likely winners and losers and the factors shaping entrenched positions on particular initiatives.	Create delay and administrative overload. Identifying and informing interest groups, seeking views, building the results into analysis and feeding back are all time-consuming and potentially costly activities which can lead to.../ a sheer volume of information generated.
Strengthen the legitimacy of final decisions.	Provide a focus for the mobilisation or resistance, creating difficult public presentation issues especially if the scale of the challenge is greater than expected or comes from unforeseen quarters.
Increase the responsiveness of citizens and built the confidence of communities or interest groups in dealing with particular issues.	Raise expectations amongst those consulted that their views will be taken into account even though decisions cannot possibly reflect every opinion expressed. Produce unrepresentative views – well organised lobby groups and sectoral interests can dominate a consultation process giving a distorted view of relevant opinion.

The source: Report United Kingdom of Great Britain and Northern Ireland (1999), Report by Strategic Policy Making Team Cabinet Office, Professional Policy Making for the Twenty First Century. London: Cabinet Office.

At present, there are many practices regarding the involvement of the stakeholders in the decision making process. This is not an area where mandatory requirements are appropriate. The way of involving the stakeholders is different case by case. The people performing the consultation process must find new ways to approach the stakeholders, share best practices and learn what works best in terms of consultation and involvement and in what conditions.

In theory, it is indicated that all those who will be affected directly or indirectly by the decision to be taken should be involved in the public consultation processes. But in practice there are many factors that lead to various forms of representation: political interests, poor visibility or force aggregation of interests, low technical capacity to formulate requests to the political and bureaucratic system etc.

Another important element in the consultation and public involvement in decision making process is to ensure representation of diversity (socio-demographic, residential, political orientation, etc.). If a process of involving the public does not take into account these things, there is the risk to neglect the interests of groups and to put the entire process into question. Those who organize such processes of public participation should take into account the representation of all those potentially affected by the decision.

The studies carried out have shown that people with higher formal education participate more frequently in public participation exercises. This means that people with lower formal education should be sustained to participate and to be integrated into the processes of public participation. The governors must ensure that every citizen has a chance to see the views expressed. In this way, the consultation process provides opportunities for involvement in the decision making process not only to the citizens, but also to the pro-active groups. The administration addresses the issue of the interests' groups' representativeness in a limited and/or formal way.

The consultation should not be seen as a singular event or a series of singular events. In order to speak of a successful consultation it is very important to pay attention to some elements of management process. Citizen participation in the decision making can be primarily analyzed as a process. This process implies the agreement and the involvement of two actors: the state and its citizens - as individuals or organized in formal and informal structures. This is not an equal partnership, because the state interest in promoting public participation in the decision making is essential.

The status, power and information resources are different for the two actors, so their cooperation is always required. Supporting public participation in the decision-making is not an easy task, involving a rethink of the operating modality of government structures, a change of organizational culture and resource allocation. In other words, supporting public participation requires a specific policy encouraging public participation.

On the other hand, the contribution of citizens must be analyzed not only in terms of participation in debates and decision, but also in terms of their ability to accept or decline a certain thing, the ability to report problems, to seek solutions, to actively monitorize the implementation of public policy, to persuade other citizens to join them in various action, to mobilize resources, etc.

In order to improve the quality of representation in the public consultation processes it is necessary to elaborate a methodology for all those interested to organize such processes guiding their way of working with the stakeholders. A key ingredient for public consultation and participation processes is the transparency of decision-making. Not incidentally the concepts of decisional transparency and public consultation are used together in the legislative area. In the absence of political will in order to ensure

the transparency of administrative decisions, every approach to public consultation is difficult to achieve. But the transparency of decision-making once accepted and politically promoted requires also an administrative and managerial effort for creating the desired beneficial effects.

Another important element in the consultation process is the **post consultation reports**. Although they may seem insignificant in the economy of organizing a public consultation, they have a very important role. These increase the confidence in the usefulness of the participation approach and in public administration. The lack of these documents may produce suspicion of "*occult arrangements*", "*manipulation*", accusations of formalism and lack of real interest for the citizen opinion.

2. THE ANALYSIS OF THE CONSULTATION PROCESS IN ROMANIA

In our country, the Law no. 52 of 2003 decisional transparency in public administration established the minimal procedural rules to ensure decisional transparency within central and local public administration authorities that use public financial resources, in the relations established between them with the citizens and their legally established associations (Law Romania, no 52 of 2003).

In their annexes, the Government Decisions no 775 of 2005 and no 1361 of 2006 institute for the rules initiators the obligation to present the information on public consultation process as part of presentation tools and motivation, according to the Law no. 52 of 2003 (Government Decision Romania, 2005; Government Decision Romania, 2006).

In Romania we can not speak about a culture of communication between the central public administration and the stakeholders, in order to facilitate the understanding of process of drafting regulations by the latter. Therefore, it is necessary to improve the consultation process and the social dialogue by creating a mechanism and developing practices that involve people interested in the consultation process before drafting the regulations.

In this way, *the Strategy for better regulation at central government level, 2008-2013* has in view the following aspects:

- To change the Law no. 52 of 2003 establishing the obligation for public administration institutions to motivate their decisions, to take into account whether or not the proposals and the recommendations made by interested persons. Also, the area of the law should be extended to the public policy;
- To develop the best practices guide regarding the consultation process of NGOs and other interested persons;

- To develop the best practices guide regarding the consultation process of public administration institutions;
- To organise training courses for the responsible for the relationship with civil society and juridical directions of central public administration institutions on consultation issues (methods, best practices);
- To introduce programs in order to identify and promote best practices at central level;
- To initiate pilot projects in order to implement best practices (in Romania and other European Union Member States or other countries);
- To promote exchange of experience between central public administration institutions in Romania and other European Union Member States;
- To organize a series of roundtables and discussions with civil society representatives, on the most effective methods of consultation, finalized as a framework document, which contains information about most effective the methods identified for consultation at the central level. It is also important to note that there are issues not requiring consultation with civil society. We talk here about the issues having a limited impact on society, or whose resolution is compatible with European Union rules in force. (Strategy Romania, 2008).

Analyzing the practice of public consultation in Romania, it should be noted that the public involvement in the decision making process is made by consultation and not by participation in many cases. The difference between the two levels of public involvement is that the public consultation process requires public input on various options formulated, while the public participation involves inviting the public to the debates before developing the options. The forms of consultation initiated by the public administration institutions are especially the meetings with the authorities, the joint committees on Administration - NGOs and the public hearings. Sometimes the surveys are also used.

The civil society is not yet sufficiently developed in order to sustain an active consultation, because of the problems with the aggregation of interests, the application form, sometimes even in terms of skills. The main sources of information for NGOs used by the public administration on decisions of public interests are: Internet, media, other NGOs, personal contacts, email list of public administration, government publications, telephone, notice board. There are few NGOs requiring public information on the basis of Law no 544 of 2001 regarding the free access to information of public interest, although we consider that this means of information allows a direct dialogue on subjects of interest. According to this law, *"the free and unrestricted access of any person at any piece of information of public interest, ...,*

constitutes one of the fundamental principles of the relations between persons and public authorities, in accordance with the Constitution of Romania and with the international documents ratified by the Parliament of Romania". (Law Romania, no 544 of 2001).

The capacities of NGOs to influence public policy are: information, qualified personnel, and financial resources. The facilities of these organizations are: databases, relationships with partners in the economic environment, experience, media, office/room, training room/ workshop, access to legislation, equipment, and their own site. The issues of public consultation in Romania is in an early phase, and citizen participation in the decision-making process of public policy is viewed with suspicion and mistrust. There are many situations where citizens and NGOs are invited to participate in various public consultations, more or less formal. The public participation and consultation are reduced to simple discussion representing "consultation events" that have to be put on the administrative or political agenda.

This situation can be explained by the following reasons:

- The administrative tradition in Romania that has not gift value nor do not give value to the input of citizens in the decision on allocation of public resources;
- The administrative decision that is based on a legal excessive sense, neglecting the managerial logic;
- The slow pace of implementation of the reform administration and the early stage of using public consultation.

3. USING CONSULTATION TO IDENTIFY THE MAIN SHORTCOMINGS OF THE PRISON SYSTEM

The reform of any system should start by identifying its weaknesses and it should also take into account the interests of the affected parties by the decision making process. We believe that the main way of identifying the weaknesses of the Romanian penitentiary system for future reforms is the consultation of the affected parties: the employees in the system and the prisoners. In this case we took for example a questionnaire distributed to the employees and prisoners of the National Penitentiary Agency which showed, in terms of perceptions rather negative in society, the key role of consultation in identifying the penitentiary system issues. Taking into account the issues identified, we remarked that it was necessary to introduce on the public agenda the objectives, constraints and the results of the prison service.

Penitentiary Service, as part of the judiciary services, has the mission to ensure respect for fundamental

rights of the individual in the execution of punishment and measures involving deprivation of liberty, to ensure the education of prisoners in order to return and their social status and contribute to improving the safety of the community by creating and maintaining a secure environment custodial and transparent. (Călinescu, 2001).

Considering the staff from prison as the main catalyst for reform of professional standards and mentality in the prisons system, we concluded that their views can help to identify the shortcomings of the system. Considering also that the prison system performance is reflected by the degree to which people deprived of freedom can return into community as citizens capable of living and is claimed by its own forces, in compliance with the laws and moral norms accepted, their views are important to correctly evaluate the efficiency of the system in relation to its social mission.

Through Compartment Research and Studies from National Penitentiary Agency, we have been distributed questionnaires to a number of 399 persons. The research was descriptive in nature and its main objectives were to identify the following: the employees' opinions of units subordinated to the National Penitentiary Agency on the institutional and informal relationships at work; the perception prison employees on the prisoners; the prison employees' perception regarding the quality of vocational training, working conditions and wages; the prison employees' opinions on the mission of the prison system.

3.1. The results of the survey of the prisons employees

The appreciation of the role of penitentiary institution

After this research it was noted the followings:

- 42,3% of the sample of employees of the penitentiary system considered that the main role of the prisons was social reintegration;
- 17.6% of the respondents consider that the role of social reintegration can not be split of the custody;
- Less than one quarter of prison officials see in their work only important custodial role;
- 17.2% have not responded to the questions.

The appreciation of the management of the institution

The assessment on a scale of 1 to 10 concerning the care shown by the leadership of the institution from achieving the objectives of management of the National Penitentiary Agency has generated an

overall average of perception of 8,56. The assessment on a scale of 1 to 10 concerning the care shown by the leadership of the institution for subordinates is perceived by study subjects as less - 6.60. Thus, the employees consider that on decision-making level, directors of prisons are concerned more about achieving their tasks than about the subordinates.

By this research we wanted also to know the opinion of respondents concerning the degree of involvement of management staff in the decision-making process in the prisons:

- The workers in the penitentiary system consider that they are not consulted before making a decision, 63% declaring that they are rarely consulted or very rarely;
- In nearly 50% of these cases the decision is not even explained and it represents a simple order which a large proportion of staff (third) does not understand.
- If the employees are, however, consulted by their superiors in the decision-making, most of them declared that their opinions are rarely or very rarely taken into account.
- Only 15% of prison employees specify that they are consulted and that their personal opinion is taken into account in the decision-making process.

The evaluation of the sectors activity

By granting qualifications from 1 to 10, the respondents appreciated the quality of activity for each sector of activity:

- All the sectors, whose work does not involve working directly with the prisoners, have obtained over 8, and this proves that their work is positively appreciated in the prison system.
- Social Reintegration Service had a modest appreciation of activity (the position 8 in quality rankings activity) which indicates a major dissatisfaction regarding the competence and the efficiency of the employees of this sector, or dissatisfaction of the security sector employees who claim that they are not often supported in their work by the experts from the other services that work with prisoners.
- The biggest complaints refer to the quality of medical assistance activities and the educational function of the prison service.

3.2. The results of the survey of the prisoners

The information obtained from 681 prisoners, which is considered a representative sample for the research, with a margin of error of research $\pm 5\%$ revealed an obvious displeasure of prisoners in

particular towards: the quality of food (the smallest average - 6.51); the comfort of the room holding (in some prisons the index of overcrowded exceeds 150%); the quality of healthcare and hygiene and cleanliness conditions. The prisoners have appreciated the followings: the prison employees' behavior (the highest average - 8.95); the level of security in the room holding and in prison; the access to public information.

4. THE REFORM DIRECTIONS IN THE ROMANIAN PENITENTIARY SYSTEM

After this research we consider that the reform of the Romanian penitentiary system should focus on the following directions:

- Ensure a positive image of the prison service to society. It is necessary to ensure total transparency, responding to all requests from the legal media and civil society and also to increase the number of active partnerships and actions taken to the local community.
- Develop educational function of the prison service. The psycho-social intervention programs will be available for a lot of inmates with serious problems (alcohol, drugs, violence, etc.). It will also provide a degree of inclusion of those who want to participate in literacy programs.
- Improve health care service in prison. It is necessary to modernize the equipment and to reduce the annual rate of deaths in the system.
- Develop human resources policy. We consider that the percentage of personnel involved in training activities or specialized should be increased annually.
- Involve the employees in the decision making process in the prison. The workers in the penitentiary system should be consulted before making a decision and their opinions should be taken into account
- Improve conditions at the prison: the food, the comfort of the room holding, the hygiene and cleanliness conditions.
- Provide an optimal level of resources for the operation of the penitentiary service. It is necessary to increase the level of investments reported at the detention unit in order to modernize them.

The Penitentiary Service should become a social partner for the community, known as essential in ensuring public safety. As a consequence, it is necessary to improve and to adapt the organizations activities of the system to the new realities of the Romanian society, by developing strategies and

reforms that solves the problems of these organizations and improves the public image of the penitentiary system.

In this case, obtaining information by consulting the employees of the penitentiary system and prisoners facilitates the identification of problems related to working conditions of employees in the system and detention conditions. The consultation carried out by distributing the questionnaire in the National Penitentiary Agency provides guidance on the overall interests of all stakeholders and general information on the future allocation of the available resources. It also provides information on the future orientation of the penitentiary system, representing the starting point in elaborating the future reforms. In addition, we suggest the involvement of the following stakeholders in the decision making process: NGOs developing programs for prisons, the families of the prisoners, the church, the representatives of the educational system, the representatives of the health system, the County Agency for Employment of Labor Force.

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